IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 143 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

(1) DHIRUBHAI R SODHA

(2) DIPAKBHAI D SODHA

(3) JITENDRA D SODHA

Appearance:

MR ND GOHIL, Addl.PP.for the Appellant with
MR JN JADEJA (Advocate for the original Complainant).

None, for the Respondents

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 12/01/2001

CAV JUDGEMENT

1. This is an appeal by the State against the order

of acquittal dtd.30th November, 1991 passed by Chief Judicial Magistrate, Amreli in Cri. Case No.798 of 1990. The respondents (Original accused) were charged with offences under section 452,323, 324 and 114 of the Indian Penal Code.

2. The case of the prosecution is that there is ample direct and indirect evidence to connect the respondent with the offence and such evidence has been erroneously discarded by the Trial Court and emphasis has been laid on the deposition of the injured complainant ; which is stated to be corroborated by the First Information Report. It is further stated that the complainant was injured and hence his presence at the time of the incident is proved and the injury in question is corroborated from the medical report. It is further contended that there are two eye-witnesses, namely, Anubhai and Kamaleshbhai and their evidence has been discarded by merely stating that they are interested witnesses; that Anubhai, who is the servant of the complainant, was present in the shop on the day and at the time of the alleged incident. In support of these submissions, we were taken through the deposition of the complainant (exh.20), the complaint i.e. F.I.R. (exh.21), deposition of prosecution witness No.5 Anakbhai Amrubhai (exh.32) who is the servant of the complainant, deposition of prosecution witness No.6 Dr. A.D. Ashar (exh.33), deposition of prosecution witness No.7 Kamlesh Vaghumal (exh.35), who is the cousin of the complainant and deposition of prosecution witness No.8, Head Constable Kalyansing Sagardan (exh.36) who was the investigating officer. The Ld. Counsel Shri J.N.Jadeja representing the original complaint appeared in support of the prosecution case and in addition to the contention raised by the Ld. Addl. P.P. sought to derive support from the various pieces of evidence on record and for this purpose he read extensively various depositions to highlight the prosecution case.

3. For appreciating the case of the prosecution, it is necessary to have a brief resume of the facts. It is alleged that on 5th March, 1990 at around 20:45 hrs. the respondents (original accused) illegally entered the shop of the complainant, namely, Rameshbhai Mayaram and beat up the complainant with sticks and iron patti as well as various blows in abetment with one another and injured the complainant. Accordingly the respondents were arrested and charge-sheeted with offences punishable under section 452,323, 324 and 114 of the Indian Penal Code. The accused have denied the charges framed against them and accordingly they were tried by the Ld. Chief Judicial Magistrate, Amreli. The defence of the

respondent is that there is a wooden partition between the shop of the complainant and the shop of the respondents and the complainant used to push such wooden partition so that the rack in the shop of the respondent containing books would fall down and create nuisance in their shop, and accordingly they scolded the complainant in this connection and hence a false complaint has been filed against them.

4. On the basis of the evidence and the pleadings before it the trial Court framed the following two issues and answered respectively as under :

(1) Is the case of the prosecution proved beyond reasonable doubt that at the time and at the place of alleged incident the accused entered the shop of the complainant and gave blows with sticks and 'ganeshia' to the complainant so as to result in simple and grievous injuries and for this purpose acted with common intention so as to commit offence punishable under section 452,323, 324 and 114 of the Indian Penal Code.	NEGATIVE
(2) What should be the order.	As per final Order

5. The complainant Ramesh Mayaram is carrying on business of trading in cloth in the name of 'Kashmir Cloth Store'. According to him there was a dispute between him and the accused regarding vacating the shop premises and his servant Anakbhai tried to calm down the accused, but the accused became angry and started beating up the complainant. It is further stated that accused No.3 was having a 'ganeshia' with him; the said accused No.3 has been identified in the Court by the complainant and the name of accused No.3, was stated to be Dipak. In this connection, the trial Court has observed that Dipak is accused No.2 as per the F.I.R. In the deposition the complainant states that accused No.3 and accused No.1 were having sticks with them and accused No.1 gave a blow with stick on the head of the complainant while accused No.2 gave a blow with 'ganeshia' and the complainant started bleeding from the head and fell down; it is

further stated that at this juncture accused No.3 gave a blow with stick in the back and further there were two stick blows on the right hand elbow and at this point of time the witnesses Anakbhai and Kamleshbhai intervened and saved the complainant; that he was thereafter taken in a rickshaw to the Govt. Hospital and he lodged the complaint against the accused. In the cross-examination the complainant has stated that originally, entire shop was rented and that he had taken it on rent from Taherbhai; that he has a rent-note in the name of Mayaram Jamnadas and the same is produced before the trial Court. After the shop was divided into two parts, Dhirubhai, (one of the accused) purchased one of the portion and in this connection Civil Suit No.52 of 1983 has been filed by the complainant against the accused. Thereafter another Civil Suit No.349 of 1984 has also been filed and in the said suit injunction which was claimed had been denied. It is further admitted in the cross-examination by the complainant that the accused No.1 had filed two or three chapter cases against the complainant. The complainant has further accepted the fact that behind the partition in the shop of the accused there is a rack but it is denied that he used to push the partition so that the wooden rack would fall down. The complainant further states that the incident occurred between 8:30 p.m. to 8:45 p.m. and at that point of time there was movement of people on the road and at a distance of 25 feet the tower is situated where police men are on duty but it is further stated that on the said day the police men were not present. The complainant has further accepted that he has laid out a carpet in his shop and goods were lying on the said carpet and he was folding the cloth when the accused entered his shop. In front of the shop there is an otla of 7 feet and on entering the shop accused No.1 gave a stick blow; that thereafter he left his stick and caught both the hands of the complainant and thereafter accused No.2 who had come with the 'ganeshia' gave a blow. Accused Nos. 1 and 3 gave a stick blow was not mentioned in the F.I.R. The stick was about the length of two and half feet and was of thickness of one and half to 2 inches. The 'ganeshia' was about one and half feet, i.e. iron patti which is used for opening the boxes and that is of about one and half feet. It is further stated that after the blows were given by all the accused the complainant fell down and he was bleeding and the blood had fallen on the ground as well as on the carpet and his cloths were blood stained. In the cross-examination, it is further admitted that the police have not seized the blood stained cloths. The complainant further states that he had not lost consciousness and Kamleshbhai had taken him to the Hospital. The complainant further

states that Kamlesh, who is paternal uncle's son was with him in the hospital. The iron patti which was produced as muddamal was shown to the complainant and he states that it was a 'ganeshia' type patti and not plain iron patti. In further cross-examination the complainant had admitted that he has not paid rent of the shop premises since 3 years.

6. The trial Court has thereafter taken into consideration the panchnama. Panch witness Kaniyalal Sukhram in his deposition at exh.27 states that there were blood stains in the shop on the carpet, that shops opposite Kashmir Cloth Store remain open upto 9:00 p.m. It is further stated that though in the panchnama blood stains are stated to be present inside the shop, it is incorrect and there was no carpet on the otla, i.e. from the point where the shop ends till the otla there was no carpet. There were blood stains on the eastern end of the otla. In this connection on going through the panchnama it is found that it records that there was carpet both in the shop as well as on the otla before the shop and the carpet was blood stained on the eastern end of the otla and there were no blood stains on the carpet inside the shop. It is in this context the trial Court has found that there are contradictions in the panchnama and the deposition of the panch witness Kaniyalal Sukhram and hence it has found that the said witness is not reliable.

7. According to prosecution witness Anak Amru he is serving in the shop of the complainant and on the day of the incident accused No.1 had come and was standing on the otla outside the shop and threatened the complainant that he should vacate the shop premises or else he would be finished. Thereafter the accused started beating the complainant. It is further stated in the cross-examination that the complainant who was folding sari inside the shop went out of the shop on the otla is not correct and that the accused had come inside the shop to beat up the complainant. He further states that he is not aware as to who gave how many blows and with what weapon. He further states that the complainant was shouting but he did not intervene. The shop of Kamlesh is at a distance of about 200 feet near tower towards Kansara Bazar.

8. Prosecution witness Kamlesh Vaghumal (exh.35) admits in the cross-examination that he had not seen accused beating up the complainant; that there were about 20 to 30 persons outside the shop; that he had not asked anyone from the crowed as to what had happened and

further that he was not in a position to state as to which accused was having which weapon and as the complainant was bleeding inside the shop Kamlesh took him to hospital.

9. Thereafter referring to the deposition of the investigating Officer (exh.36), the trial Court has found that in the cross-examination it is admitted that he is not inquired as to whether the complainant is tenant of the accused nor he has obtained copies of the Civil Suit and the Chapter cases relating to the dispute between the two parties in connection with the shop premises. He further admits in cross-examination that no muddamal was recovered from the accused. At this juncture the trial Court has observed that the accused have constantly denied of having any weapons.

10. On an overall appreciation of the entire evidence and with special reference to the aforesaid depositions of various witnesses and the complainant, the trial Court has found that :

(1) The complainant was injured on the head, forehead, shoulder and back and these injuries were simple as well as grievous injuries.

(2) That Kamlesh's shop is at a distance of 200 feet from the shop of the complainant and Kamlesh having not seen the incident himself could not state with certainty as to which of the accused had what weapon with him and whether such weapon had been used by the accused concerned for causing injury to the complainant.

(3) As per the deposition of the complainant as well as Kamleshbhai, it was Kamleshbhai who took the complainant to hospital, however, the deposition of the Medical Officer as well as the Medical Certificate shows that one Darshan Mayaram had taken the complainant to the hospital and it was Darshan Mayaram who gave the case history to the doctor.

(4) That Darshan Mayaram has not been examined by the prosecution.

(5) That there are disputes between both the parties in relation to the property and Civil Suits are pending in the Court.

(6) That the complainant has admitted that he has not

paid rent for 3 years.

(7) The medical certificate as well as the deposition of the doctor shows that the injuries could not be occasioned by the muddamal sticks.

(8) The deposition of the complainant as well as witnesses Anakbhai and Kamleshbhai shows that the accused were having one 'ganeshia' with them, but in the muddamal there is no 'ganeshia' and only an iron strip is produced.

(9) That such iron strip can not give the injuries which have been occasioned.

(10) That witness Anak Amru states that the accused were standing outside the shop on otla while the complainant states that the accused had entered inside the shop premises.

(11) In the cross-examination Anakbhai admits that he is not in a position to state as to which accused had given how many blows and with which weapon.

(12) The incident has occurred in a shop situated on the main road and there was a crowed of about 30-40 persons and various shops were also open at the time of the incident, but in this connection no deposition has been recorded nor has any independent person who could be said to be present been produced by the prosecution.

(13) That amongst the eye-witness Anakbhai being the servant of the complainant can be deemed to be an interested witness.

(14) That another so-called eye-witness, namely, Kamleshbhai is not proved to be actually present and hence his deposition can not be relied upon.

(15) That the recovery of the weapons from the accused is not proved by the deposition of the panch witnesses.

(16) That panch witness Kaniyalal Sukhram has made contrary statements and hence can be deemed to be a hostile witness.

(17) There is contradiction as to the place of the blood stains vis-a-vis that recorded in panchnama and as stated by panch witness Kaniyalal Sukhram,

and therefore, as to whether the alleged incident actually occurred remains unproved.

(18) That there is discrepancy in the deposition of the complainant as to which weapon was handled by which of the accused.

(19) That the police have not seized the blood stained cloths of the complainant.

11. It is in these circumstances and the facts which have come on record that the trial Court has come to the conclusion that in the backdrop of the civil disputes regarding property between the two parties, as well as the medical evidence as to the injuries as not having been occasioned by the muddamal sticks recovered from the accused (which also is in dispute), that the trial Court has held that the prosecution has not been able to prove its case beyond reasonable doubt and in such circumstances only on the basis of the say of the complainant, his servant-Anakbhai and his cousin-Kamleshbhai it would not be advisable to hold it was the accused only who had committed the alleged offence at the time and the place stated in the complaint.

12. After having taken into consideration the submissions of the appellant as well as counsel representing the complainant, we have carefully gone through all the evidence on which reliance was placed by the prosecution and we do not find any infirmity in the conclusions arrived at by the trial Court on the basis of appreciation of evidence and material on record and hence there is no warrant to interfere with the judgement and order of the trial Court. The trial Court has correctly given benefit of doubt to the accused and acquitted the accused from the alleged offences under section 452,323, 324 and 114 of the Indian Penal Code read with section 248(1) of the Criminal Procedure Code. This appeal by the state is therefore dismissed with no order as to costs. Record be returned.

(Katira) (D.A. Mehta, J)